



City of McMinnville
Planning Department
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MINUTES

June 17, 2021
Planning Commission
Work Session Meeting

6:30 pm
Zoom Online Meeting
McMinnville, Oregon

Members Present: Roger Hall, Gary Langenwalter, Sylla McClellan, Lori Schanche, Dan Tucholsky, Sidonie Winfield, Beth Rankin, and Ethan Downs – Youth Liaison

Members Absent: Robert Banagay and Brian Randall

Staff Present: Heather Richards – Planning Director, Jamie Fleckenstein – Associate Planner, and Spencer Parsons – Legal Counsel

1. Call to Order

Chair Hall called the meeting to order at 6:30 p.m.

2. Citizen Comments

None

3. Public Hearing:

A. Quasi-Judicial Hearing: Minor Partition (MP 6-20)

Request: Approval to partition an approximately 7.22-acre parcel of land into three (3) parcels, approximately 6.43, 0.31, and 0.48 acres in size to allow for residential development. The proposed 0.31-acre parcel would be accessed by private easement from SW Fellows Street while the 6.43- and 0.48-acre parcels would be accessed from SW Hilary Street.

Location: The subject site is located at 835 SW Hilary Street, more specifically described at Tax Lot 1600, Section 29AB, T.4S., R 4 W., W.M.

Applicant: Steve and Mary Allen, property owners

Disclosures: Chair Hall opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. He asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none. Chair Hall asked if any Commissioner needed to declare any contact prior to the hearing with the applicant or any party involved in the hearing or any other source of information outside of staff regarding the subject of this hearing.

Commissioner Rankin knew an adjacent property owner. She had not spoken with her about this application.

Commissioner Winfield also knew an adjacent property owner, but had not had any contact with them about the application.

Chair Hall asked if any Commissioner had visited the site. If so, did they wish to discuss the visit to the site? Several Commissioners had visited the site, but had no comments to make on the visit.

Staff Presentation: Associate Planner Fleckenstein presented the request for a minor partition at 835 SW Hilary Street. This would partition the 7.22 acre parcel into three lots: Parcel 1 would be 0.48 acres accessed from Hilary Street, Parcel 2 would be 0.31 acres accessed from Fellows Street, and Parcel 3 would be 6.43 acres accessed from Hilary Street. He described the site location and context including the existing private access easement on Fellows. There was a past land use decision on this site. A minor partition was approved by the City in 2000 dividing the property north of the subject site into 3 parcels. A condition of approval required either a road vacation petition to vacate undeveloped right-of-way west of the property or development of the right-of-way to City standards. An ordinance was adopted by the City Council approving the vacation of the undeveloped right-of-way west and south of the property. A condition also required an access easement be granted to the southern property by the owners of the northern property in a location and of a specification to be approved by the Fire Marshall and City Engineer. The partition was finalized with the approval and recording of the partition plat. The plat included the location of the access and utilities easement to benefit the portion of Block L of the Cozine's third addition lying westerly of Cozine Creek. This plat showed that access could be provided to the current application. It also referenced a recorded driveway construction and maintenance agreement as the governing document for the access and utilities easement. A large portion of the site was zoned floodplain. There were also R-2 and R-3 zones. Partitions were considered a Type II application with decisions based on clear and objective criteria and no discretion. The public may request a public hearing during the notice period. The Planning Department did receive a request for a public hearing. The approval criteria for the partition remained the same. The criteria were clear and objective. The decision document provided the criteria/findings for decision. He then discussed the partition review criteria. The size of Parcel 1 was 19,176 square feet outside of the floodplain which was larger than the R-3 minimum lot size of 6,000 square feet and the depth of the lot was less than two times the average width. Access and utilities were provided from Hilary Street. The size of Parcel 2 was 7,125 square feet outside of the floodplain which was larger than the R-2 minimum lot size of 7,000 square feet and the depth of the lot was less than two times the average width. Access was provided from Fellows Street via the private easement and undeveloped right-of-way. Water and electric were installed in the easement from Fellows Street, sewer was available from the adjacent main, and minimal right-of-way improvements were required. The size of Parcel 3 was 50,240 square feet outside of the floodplain which was larger than the R-2 minimum lot size of 7,000 square feet. The existing dwelling continued to meet the setbacks of the R-2 zone. There was existing access and utilities from Hilary Street. Proposed parcels 1, 2, and 3 met the clear and objective criteria for partitioning.

The Planning Department received 12 public comments before the packet was issued including the request for the public hearing. The testimony received on Parcel 2 had these recurring themes: loss of trees from right-of-way and Parcel 2, increased traffic on existing private driveway, emergency vehicle access to Parcel 2, increased safety issues on Fellows Street, impact of development on the flood plain, and decreased property values. Some trees were

likely to be removed to accommodate a driveway in the right-of-way and residential development on Parcel 2. Tree removal requests were subject to Chapter 17.58—Trees. There was no zoning code that prevented development of Parcel 2 to preserve trees. Chapter 17.58 encouraged thoughtful planning and review to preserve as many trees as possible. Replacement trees could be conditioned by the Landscape Review Committee. Staff recommended a condition to require review of the tree removal requests and to limit approvals to trees in poor condition or severely impacted by the development. Regarding the increased traffic, the minimum standards for access easements were 15 feet wide with a 10 foot paved surface width. The existing access easement was 22 feet wide with a 12-13 foot paved surface width. The terms of the private agreement were a 15 foot driveway width prior to occupancy of Parcel 2. The access easement/driveway was previously approved by the City to serve future additional lots and the Engineering and Fire Departments had the opportunity to comment on the current application. Additional review could occur at the building permit review. Regarding concern about increased safety issues on Fellows Street, the access easement/driveway was previously approved by the City to serve additional future lots. The subject site was not developed to full density. The access easement replaced a vacated local street that would have served the same properties. Regarding the concern about impact on floodplain/sensitive lands, the floodplains were defined by the March 2010 Flood Insurance Study for Yamhill County and Incorporated Areas and FIRM panels. Development within 1% annual chance floodplain was prohibited by Chapter 17.48—Flood Area Zone. McMinnville relied on state/federal agencies for regulatory authority of wetlands and other sensitive natural features. Staff recommended a condition stating the application would comply with all state/federal environmental permitting agency requirements. Regarding the concern about decreased property values, consideration of property value was not a regulatory criteria for land use decisions. The subject site was designated residential on the City's Comprehensive Plan and was intended for development. Additional testimony was received from Steve and Mary Allen in response to the staff report. They were concerned about livability, neighborhood, and undeveloped right-of-way. He clarified no portion of the right-of-way adjacent to the subject site was vacated for the Tall Oaks subdivision. The future residential development was on private property. A driveway across the northern portion of the right-of-way would be necessary to access Parcel 2 from the private easement. Neighbors could still access the public right-of-way. The right-of-way was not a protected area. The Conditional Use criteria applied to those uses identified in a zoning district that might be appropriate under certain circumstances. The right-of-way was not within a zone and Conditional Uses did not apply. The applicant had some questions for staff. One was about the purpose of the revocable license and right to use public right-of-way. Staff answered the agreement allowed private development within the public right-of-way. The alternative was to require full street improvements. Another question was about the purpose of the waiver of rights of remonstrance. Staff answered it was the waiver of the right to protest future City initiated street improvements. The alternative was to require full street improvements at the time of development. There was a question from the Planning Commission about why there were no easements from the undeveloped right-of-way or vacated Hilary Street to Tall Oaks shown on the tentative partition plat. Staff answered that vacated roads were returned to the adjacent property—now private property. Tall Oaks properties about the right-of-way and no easement was necessary for access. The applicant submitted photographs of the existing conditions of the undeveloped public right-of-way. An additional letter was received from Walt Gowell on behalf of Steve Macy regarding Condition of Approval #1. That condition intended to preserve the access and development rights of three existing parcels along the existing access easement from Fellows Street without placing the City in a position of enforcing a private easement agreement. The letter suggested revising Condition #1 to clarify that the decisions were modified and amended by Note #2 that incorporated the requirements of the driveway construction and maintenance agreement. There was another question from the Planning Commission about whether the conditions for Parcel 2 included

either a remonstrance for the access easement or just plain costs. No waiver of the right of remonstrance was recommended by the Engineering Department. The City did not intend to improve the undeveloped right-of-way to Parcel 2 to current street standards. The responsibility of the cost to extend the private driveway in the right-of-way could be assigned to the applicant in the right-of-way use permit. Another Planning Commission question was if there should be a condition for the revocable license and right to use to include the costs by the applicant for widening the easement. The easement construction/widening was governed by the private easement agreement and the City was not a party. The applicant was financially responsible for the widening of the driveway per the agreement. A letter was received from David Koch on behalf of Earl Anderson, Carole Hansen, and Cheryl Lambright regarding concerns about meeting the standards of Chapter 17.53—Land Division Standards and meeting the Comprehensive Plan policies. Staff had not had time to respond to that testimony. The applicant had requested a continuance of the hearing to July 15, 2021. At this time, staff's findings supported approval of the minor partition with conditions. Staff recommended continuing the hearing as requested.

Commission Questions: Commissioner Langenwaller asked if this was an easement, driveway, or platted road. Planning Director Richards said when this area was platted for urban development, they platted a road to serve the property. When the northern property was partitioned, the platted road was vacated and changed to a private access easement. They never vacated the rest of the platted road.

Commissioner Winfield asked about the changes recommended to Condition #1. Associate Planner Fleckenstein said there needed to be more discussion about how the condition should be revised.

Commissioner McClellan asked about development in the floodplain and approvals required from state and federal agencies. Associate Planner Fleckenstein said it was prohibited to develop in the floodplain. There were storm drainage facilities that would be required and if those facilities encroached into the floodplain, that would be regulated by other agencies.

Commissioner McClellan asked about building close to the floodplain. Planning Director Richards said they would have to meet the setbacks of the zone and they could not use the floodplain as the setback. Any fill for the property that encroached in the floodplain or clearing in the floodplain would be regulated by other agencies.

Applicant's Testimony: Steve Allen said they would stay within all the regulations.

Public Testimony:

Proponents: Dee Klevinger, McMinnville resident, supported the application.

Opponents: David Koch, attorney, was representing Earl Anderson, Carole Hansen, and Cheryl Lambright, neighbors of the proposed partition. He explained where his clients lived in proximity to the proposal. The primary concern of his clients was the proposed Parcel 2 and the related residential development that would follow. The burden of proof was on the applicant to demonstrate the application met all of the criteria. The purpose of Chapter 17.53 was to ensure land divisions had adequate width and arrangement of streets, to provide for the protection, conservation, and proper use of land, to secure safety from fire, floods, slides, pollution, drainage, and other dangers, to protect public health, safety, and welfare, and to carry out the goals and policies of the Comprehensive Plan. He thought the application failed to meet these criteria. There were no contour lines on the tentative plan so the Commission did not know the topography. They also did not clarify

which areas were in the floodplain and which were not, the direction of the creek, or showed the natural features on the site. The title report was prepared 66 days before the application was submitted instead of 60 days. Because the applicant failed to submit what was required, they failed to satisfy the criteria of 17.53. The property sloped quickly from the edge of the right-of-way down into the floodplain. When you put the steep slope against the landslide hazard data, it showed these western slopes on Cozine Creek fell within moderate to high risk for susceptibility to landslides, especially Parcel 2. He questioned if it was a suitable location for future residential development. The applicant also should have provided the location of the wooded areas and trees that would be impacted, particularly those with 9 inch diameters or more that were to be preserved if possible. Since they were not on the plan the Commission did not know if it was possible to preserve them. There was a requirement that when the property that was to be partitioned could be further divided the applicant was required to submit a future development plan along with the partition plan. No future development plan had been submitted even though to the west and south there was potential for development. New parcels should only gain access by easements under unusual circumstances. Providing access to an existing parcel was different than providing access to an unlimited number of future parcels that might be partitioned off of the existing parcel. Just because the easement originally planned to give access to the existing lot, it did not mean it gave the applicant a fourth lot they were now requesting off of this private easement. He thought it should be a variance. They had the right to access it in its current configuration but if they wanted a fourth lot, they should go through a variance procedure. He did not think the application met the Comprehensive Plan policies for appropriate siting of the parcels and adequate level of urban services. The primary concern was Parcel 2. There were some deficiencies that needed to be addressed and criteria that have not been met.

Earl Anderson, McMinnville resident, discussed the Tall Oaks neighborhood's opposition to the application. There was a group of White Oak trees that would be removed for development of Parcel 2. He had chosen to live in a natural setting and this was one of the few locations within McMinnville that still resided in a green, natural setting. There were deer, birds, and other wildlife that routinely visited his backyard. The Cozine Creek area provided a soul nurturing break from the noise and congestion of the City. Bedrooms in Tall Oaks were typically on the Cozine side of the house affording only the breeze in the trees and the birds to greet the day. He entertained family and guest in the back yard in full view of the birds and trees and deer. He would like to keep it this way for his grandchildren.

Mark Davis, McMinnville resident, said development was not allowed in the floodplain, but he questioned whether Parcel 2 met the lot depth requirement due to the limited amount of area not in the floodplain. He did not think it technically qualified as a lot. He then referenced the Parks Master Plan from 1999 and the high priorities listed for this area. He thought it was a sad situation that nothing was done to preserve the Cozine Creek greenspace as was recommended in the Plan. He thought the trees would either be removed immediately or would later die or fall down due to root damage. He thought the City would need to enforce the conditions that the Planning Commission imposed.

Cheryl Lambright, McMinnville resident, had requested this public hearing. She thought this was a confusing process and wanted to make sure that everyone was paying attention to this neighborhood. She wanted to save the area and wildlife. It was a beautiful and peaceful place. She wanted the Commission to look closely at the application to balance the need for growth with the need for preservation.

Commissioner Langenwalter suggested the neighbors look into purchasing Parcel 2 to preserve it. Commissioner Tucholsky had visited the site and accessed a neighbor's backyard to get a better view of the area.

Mr. Koch questioned the depth of the lot to make Parcel 2 developable. The plan did not include the dimensions of the upland area that was out of the floodplain, however he thought it was nearly impossible to meet the setbacks for the lot. The Commission needed to decide if it was a developable parcel that was appropriate to create under the partition plan. His clients would be open to the discussion about purchasing the property.

Brad and Shirley Robison, McMinnville residents, were opposed. They asked about the mitigation that had been discussed at the neighborhood meeting. Planning Director Richards said staff had researched if a variance was required, but legal counsel determined that it wasn't. There had also been discussion about vacating the public right-of-way so the neighbors could continue to enjoy the greenway. That process had to be initiated by the property owners for a vacation request.

Carole Hansen, McMinnville resident, said removing the trees would seriously impact her enjoyment of the area. If it was a 33 foot right-of-way, some of the trees would be in that 33 feet. She did not want to see them cut down. She did not think it was an appropriate place to build. She was opposed.

Susan Perez, McMinnville resident, said she and her husband were opposed. It was a beautiful area with wildlife and should be preserved.

Rebuttal: Mr. Allen said they had requested a continuance and would provide the information that was needed.

Commissioner Langenwalter MOVED to CONTINUE the hearing for MP 6-20 with the record open to July 15, 2021. The motion was seconded by Commissioner Winfield and PASSED 7-0.

The Commission took a short break. There was discussion about when the Commission would go back to in-person meetings.

B. Quasi-Judicial Hearing: Variance (VR 2-21)

Request: Approval of a variance to MMC Section 17.53.100(C)(1) to allow an increase in the number of lots permitted access by private easement to more than three (3) to support a future partition application.

Location: The subject site is located at 2185 & 2191 NW 2nd Street, more specifically described at Tax Lot 502 Section 19AC, T.4S., R 4 W., W.M.

Applicant: Nora Collins, property owner

Disclosures: Chair Hall opened the public hearing and asked if there was any objection to the jurisdiction of the Commission to hear this matter. There was none. He asked if any Commissioner wished to make a disclosure or abstain from participating or voting on this application. There was none. Chair Hall asked if any Commissioner needed to declare any contact prior to the hearing with the applicant or any party involved in the hearing or any other source of information outside of staff regarding the subject of this hearing. Chair Hall asked if any Commissioner had visited the site. If so, did they wish to discuss the visit to the site? Several Commissioners had visited the site, but had no comments to make on the visit.

Commissioner Winfield stated she knew the potential owners, but it would not affect her decision.

Commissioner Rankin went to one of the medical offices on the site. She had not talked about the application with anyone.

Staff Presentation: Associate Planner Fleckenstein presented the variance request for 2185 and 2191 NW 2nd Street. The request was to allow an increase in the number of lots to be accessed by a private easement to four lots. The variance would support a future partition and sale of the new parcel. He described the subject site, which was a medical building complex. He explained the zoning, existing access easement, and applicable review criteria. The applicant had to demonstrate that the proposed access easement was the only reasonable method for accessing the rear of the subject lot and the subject lot was unusually deep or had an unusual configuration that was large enough to warrant partitioning. Staff did not think that exceptional or extraordinary circumstances had been demonstrated by the applicant. The applicant made an argument that the change in the zoning ordinance language created a unique situation for this property. The variance would be necessary for a partition application to move forward preserving a property right substantially the same as owners of other property in the same zone or vicinity. The variance would not be materially detrimental and the use or intensity of the use would not change and there would be no change to the existing conditions of the site. This was the minimum variance to alleviate the hardship. The applicant had not demonstrated the subject site would qualify for an access easement under MMC 17.53.100(C)(1). The previous zoning ordinance language did not allow more than three lots per easement. No written testimony had been submitted to the Planning Department for this application. The applicant had submitted a request to continue the public hearing to July 15, 2021 to submit additional materials and findings. At this time, based on the application materials and the findings in the decision document, staff would recommend denial of the variance. Staff thought the Commission should continue the public hearing as requested.

Commission Questions: Commissioner Rankin asked why the code only allowed three lots per easement. Planning Director Richards said after researching this question, staff could not find anything about what set that standard. In general, cities limited how many lots could use private access easements because they did not meet public street standards for sidewalks and ADA access. The code did allow them for anomaly situations, but it was not a default for developers who wanted to build a larger complex with an internal circulation system that did not have a street standard and after it was built partition it so they could sell the lots individually.

City Attorney Parsons said fire and life safety officials were not in favor of these private accesses because of issues with substandard facilities and access. He thought that was probably part of the discussion when the standard was established. Anything beyond three could lead to overload of the private access.

Commissioner Langenwaller asked if this application was denied, could the applicant create an access from Hill Road. Associate Planner Fleckenstein did not think that would be allowed since it was a minor arterial and direct access to minor arterials was discouraged.

Commissioner Langenwaller said if the application was denied, they would not be able to partition Parcel 1 and sell one of the lots. Planning Director Richards said that was correct.

Commissioner Langenwaller did not agree with legal counsel about the meaning of e.g. Chair Hall said the applicant was not in attendance, but had requested a continuance.

Public Testimony: None

Commissioner Rankin MOVED to CONTINUE the hearing for VR 2-21 with the record open to July 15, 2021. The motion was seconded by Commissioner Schanche and PASSED 7-0.

4. Commissioner Comments

None

5. Staff Comments

- **Introduction to Natural Features and Natural Hazards Inventory and Program Management**
- *Presentation*

Planning Director Richards announced Associate Planner Fleckenstein was leaving the City. There had been a lot of commentary over the years about protecting natural features and building in hazardous areas. There were currently no Comprehensive Plan policies that addressed these issues. The first step would be to do an inventory and then create policy recommendations for Council adoption. That work was not finished yet.

Associate Planner Fleckenstein introduced the Goal 7 Natural Hazards Inventory and Program Recommendations and Goal 5 Natural Features Inventory and Program Recommendations. He gave a background on these goals. Adoption of the Great Neighborhood Principles and the McMinnville Addendum to Yamhill County Natural Hazard Mitigation Plan provided policy direction for a natural hazards inventory and management. In June 2020 the Planning Department worked with a consultant to draft natural hazard inventories and management program recommendations for a Natural Hazard Overlay Zone and mitigation/protection based on combined risk. These recommendations integrated the Goal 5/Goal 7 programs. In September 2020 the draft Oregon Natural Hazards Mitigation Plan was released, including Yamhill County. It included a composite hazard scoring methodology where risk = probability x vulnerability and also included a vulnerability index system. In 2021, staff continued to work with the consultants to update the natural hazards program. That included the new UGB boundary to inform future planning, updating the composite hardship scoring/ranking to be consistent with the Oregon Mitigation Plan, inclusion of vulnerability in hazard risk assessment, and updating maps and preparing the Natural Hazards Overlay zone text for mitigation and protection. Also in 2021 they began work on the natural features program to include riparian corridors, tree groves, scenic views, and significant trees. The natural features interconnected with the natural hazards work. Tree grove protections might decrease landslide risk but increase wildfire risk, riparian corridor protections might help decrease flood risk, and natural hazard protection areas might provide opportunities for scenic views and open space. The Goal 7 program scope was to look at hazards such as flooding, earthquake/shaking, landslides, and wildfire and creating an inventory and mapping each individual hazard, identifying and mapping the combined hazard risk assessment, and drafting policy and overlay zone language. The Goal 5 program scope was to look at riparian corridors, tree groves, scenic views, and significant trees, identify and inventory natural features in the UGB, develop recommended management and/or protection programs, and develop a method for determining landmark/significant trees outside of the riparian corridors and tree groves. The next steps were to complete the integrated natural hazards/features work by July 2021. They would need to do a Comprehensive Plan amendment to include a Natural Features Overlay map designation and policy framework. They would also need to amend the Zoning Map to include a Natural Hazard-Mitigation overlay zone and Natural Hazard-Protection overlay zone. Draft zoning code would also be presented as part of this work which would be broken down into four areas: purpose, relationships, flexibilities, and clear and objective standards. Over the next year there would be a public process/refinement and adoption.

There was discussion regarding the purpose of this work.

The Commission thanked Associate Planner Fleckenstein for his work.

6. Adjournment

Chair Hall adjourned the meeting at 9:45 p.m.



Heather Richards
Secretary